IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE CIVIL JURISDICTION

CIVIL APPLICATION NO.4637 OF 2007
IN
FIRST APPEAL NO.2219 OF 2007

The Bandra Gymkhana & anr. Appellants
vs.
Cyril L. Vas Respondent

Mr.D.Zaiwala, Sr. Advocate with Mr.Owen Menezes
i/b.Mr.Nitin G. Raut for the appellants.

Mr.Nihar Ghag i/b. Mr.Ashish S. Naik for the respondent.

CORAM : ANOOP V. MOHTA,J.

DATED : 18th October, 2007

ORAL JUDGMENT:

By order dated 10th September, 2007 this Court has admitted the appeal and expedited the same.

2. The appellants being aggrieved by the judgement and order dated 6.8.2007 passed by the City Civil Court, Mumbai in SC Suit No.2213/2004, preferred the present Appeal.

3. The respondent herein is the member of appellant no.1-Bandra Gymkhana. The other appellants are the Managing Committee members/Trustees of the Gymkhana. As the original-plaintiff was expelled by letter/order dated 17.4.2004 a Suit came to be filed. After

considering the rival contentions, the suit came to be allowed in terms of prayer (a) which is reproduced as under:

> (a) that it be declared that the Order of Expulsion dated 17.4.2004 Exhibit "E" to the Plaint, is bad, illegal, bias, against the rules of natural justice, perverse, malafide and not binding on the Plaintiff.

4. The Gymkhana and/or such other clubs are governed by their private Rules and Regulations (Rules). As per these Rules, even on an application filed by any party, the Managing Committee (the Committee) normally take decision either to accept and/or even to reject any proposal for membership. The rules authorise them to even reject such application without assigning any reason. The decision of the Committee in such matter shall normally attain finality.

5. The law in this regard governing the principle for expulsion of Gymkhama/club members has been elaborated in **T. P. Daver v. Lodge Victoria No.363, S.C.Belgaum & ors., AIR 1963 SC 1144.** The elaborated principles are as follows:

> "9. The following principles may be gathered from the above discussion, (1)A member of a masonic lodge is bound to abide by the rules of the lodge; and if the rules provide for expulsion, he shall be expelled only in the manner provided by the rules, (2) The lodge is bound to act strictly according to the rules; whether a particular rule is

> mandatory or directory falls to be decided in each case, having regard to the well settled rules of construction in that regard, (3) The jurisdiction of a Civil Court is rather limited; it cannot obviously sit as a court of appeal from decisions of such a body; it can set aside the order of such a body, if the said body acts without jurisdiction or does not act in good faith or acts in violation of the principles of natural justice as explained in the decisions cited supra."

6. In view of this, a member of such Gymkhama/Club is bound to abide by the Rules of the Gymkhana/Club. The Gymkhana/Club is also bound to act within the frame work of the Rules. The procedure for expulsion of any members need to be followed. Having once completed the requisite formalities within the frame work of the Rules, the power of Court in such matter to interfere in the decision taken by the Committee is very limited. The Gymkhana membership and/or their activities in the private domain. Here again scope of Court's interference being decision taken by such Gymkhana/club is very limited.

7. In the present case, considering the reasoning given and in view of the grounds raised, I am of the view that at this prima facie stage of the proceeding the prayer clause as granted considering the basic principles, as referred above is not correct.

8. To support that, further facts & averments are as

under:

" He insinuated that the Hon.General Secretary was helping the Contractor on "Highway Robbery".

He further threatened the Trustees of the Bandra Gymkhana.

He accused the Managing Committee of malafide intentions - see Honourable Ms.Justice Roshan Dalvi's order dated 13.11.2007 upheld by High Court His Honourable Justice S.J.Vazifdar.

He further accused the Trustees of lies and indulging in half-truths and manipulation of facts.

He accused the Committee of "protecting" the contractor.

He has also made unsubstantiated and defamatory statements against the Managing Committee and Hon.General Secretary as well as cast aspirations about the Former President Mr.Raphael B. Donald who was a Senior Retired Government Bureaucrat and who served as Jt.Secretary, Government of Maharashtra in the Urban Development Department and has been in the service with the Government for over 40 years.

He made an imputation that the Managing Committee held the EGM with malacious intent.

He extolled a member's action of unauthorisedly seizing the peg measure and keeping the same outside the Bandra Gymkhana premises.

He brought in Excise Officials to carry out raids and not having denied the same.

I say that the charges against the six other members were not grave. I crave leave to refer to and rely upon the Emergency Disciplinary Committee report dated 30.3.2004. Herewith to annexure exhibits "2", "3", "4", "5" & "6" xerox copies of the Show Cause Notice to Christopher Rodrigues, Farokh Kamadia, Francis Lawrence, Ralph Fernandex, Levin DeFigueiredo and Stephen Rodrigues respectively.

I say that the Respondent cannot be equated with the other six members."

9. After perusal of those documents and averments, I

am also convinced at this stage of the proceeding that prima facie there is a sufficient material on record to justify that the appellant had complied with all the formalities. Having complied with the same, there is no question of interference by the Civil Court, merely because in similarly situated cases, the appellant/Gymkhana had taken some different view. We are not concerned with the power and/or authority and/or not testing the Tribunal's power under Article 14 of the Constitution of India. In such case, the facts and circumstances need detailed scrutiny. The allegations as raised and the action as taken against the respondent-plaintiff at this stage of the proceeding just cannot be said to be beyond the record and/or contrary to the law or the rules.

10. The decision as taken by the Managing Committee of the Gymkhana/club was based on the material available on record and after giving full opportunity to the plaintiff-respondent.

11. Admittedly, during the trial there was no interim order in favour of the plaintiff. He was not allowed to use and utilise the membership as claimed, as suspended.

12. When we talk about the Gymkhana or club and as

noted above, it is always a private domain. In such circumstances, I am of the view that it will not be in the interest of the appellant/Gymkhana and/or other members to allow the plaintiff/respondent no.1 to use and utilise the membership as granted by the trial court. The balance of convenience also lies in favour of the appellant/Gymkhana.

13. The learned counsel for the respondent basically contended that after considering the material available on record, including objection as raised, the trial court has granted the decree and, therefore, he may be allowed to enjoy the membership pursuant to the prayer (a) as granted. In view of the reasoning as recorded above, I am not inclined to accept this submission. The Apex Court, as referred above, has already clarified the power of the Civil Court to interfere in such matters.

14. The submission that by a majority, a group of the appellant/club, took malafide action against respondent no.1. Some decisions even by the majority, in some cases, in view of internal politics or groupism cannot be treated as final and binding. The Court has power to consider the merit of the action of such Committee or the group.A bonafide and a genuine action of minority members can be gone into in a given case but

not in the present case. The facts are glaring.

15. Apart from that in **1929 Chancery Division page 602, Maclean vs.The Workers' Union,** an English judgement illustrated this in the following words:

> "That the Courts had only a limited jurisdiction over domestic tribunals, and could not give redress to members of associations on whom hardship was worked by decisions given honestly and in good faith under the rules of such associations, even though the rules or decisions were unfair or unjust."

16. In the present case, as noted, full opportunity was given to the plaintiff and that was well within the frame work of the Rules of the Gymkhana. Having once taken that decision, the allegations of dishonestly and/or bad faith are unacceptable in view of the material available on the record.

17. The Apex Court in **Jethamal vs. Union of India, AIR 1970 SC 1310** has further pointed out that the requirement is to follow the principle of natural justice. Having once followed that and the person failed to take opportunity and therefore any decision taken based on the material available which cannot be tested again on the principle of breach of natural justice.

18. Lastly, in **Royal Western India Turf Club Ltd. & ors. vs. Vinayak J. Gaekwad & ors., 2006 (5) Bom. Cases Reporter 581,** the Division Bench of this Court again re-iterated about the domestic Tribunal's decision and the power of Civil Court to interfere in the same, by further observing that "Where on facts of case, domestic Tribunals takes particular decision Civil Court is not expected to substitute its view for that of domestic Tribunal unless it is based on no evidence or is something which a reasonable man cannot arrive at.". In the present case, in my view, the decision as taken cannot be said to be without any material or in the breach of principles of natural justice.

19. Taking all this into account, I am of the view that the interim order as granted by the trial Court which has been continued by this Court on 10.9.2007 shall continue till the decision of the First Appeal.

The Civil Application is accordingly disposed of.

[ANOOP V. MOHTA,J.]